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DEFENCE

OF

Staines (T.)

Mr. STEELE, R

IN A

LETTER

TO

A FRIEND in the Country.

*That no Power whatsoever can bar, alter, or
make void the same.*

Advertisement of the CRISIS.

L O N D O N :

Printed for *W. Aldsworth*, near the
Exchange, 1714. (

DEFENCE

OF

MR. STEELE

IN A

LETTER



A FRIEND

The above letter is to be
sent to the
custodian of the

LONDON

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A
D E F E N C E
O F

Mr. STEELE, &c.

Dear Sir,

AS I acquainted you with the Receipt of the *Crisis* you was so kind to send me, so I now can send you the agreeable News of the general Applause they have been read with by all Ranks, Sexes and Ages: The Gentry, with a surprizing Joy, remember our Glorious Deliverer, and those worthy Patriots that rescued, and rescued, secur'd to them their ancient Paternal Estates from arbitrary Power in 1688; the Common People feel within themselves more than they can fully express, but yet demonstrate it by their Love to those Descendants

dants among them, who inherit the Virtues as well as the Possessions of those worthy Ancestors ; their Wives and Daughters have not an inferior Sense of their Delivery from Nunneries ; the Old Men and Women with Tears, with lifted up Hands and Eyes, bless their merciful God for having snatcht them from the fiery Trial of their Sincerity in his Religion ; and the Youth, toucht by their Parents Tears, are rowz'd to the Ambition of imitating those generous Souls whom God honour'd with being his Instruments in bringing about, I may justly say, that miraculous Deliverance. In short, Mr. STEELE's *Crisis* hath put this County upon thinking ; and by thinking, to be grateful to their Deliverers ; and by being grateful, to desire to imitate them : And I can assure you, that it hath rowz'd up such a Spirit among us, that whenever the Pretender shall think fit to attempt the Possession of these Crowns, he will meet with those, who *now* look upon themselves as born only for the Good of their Country ; who *now* think it their Duty to spend their Estates in Defence of their Country, being by Heaven given them
solely

solely for that End; who *now* believe it as a Fundamental, that by dying for their Country, they answer the End of their being brought into Being.

Just as I had finisht this, a neighbouring Gentleman, Mr. *Aldridge*, came in, and told me, that Mr. STEELE, in several Advertisements of this *Crisis*, inserted these Words, *That no Power whatsoever can bar, alter, or make void the Succession in the House of Hanover*; for which, he said, he is liable to be prosecuted, upon the Statute of the 4th of her present Majesty, Chapter 8. which expressly enacts, That if any Person or Persons shall maliciously, advisedly and directly, by writing or printing, declare, maintain and affirm, that the Kings or Queens of England, with and by the Authority of the Parliament of England, are not able to make Laws and Statutes of sufficient force and validity, to limit and bind the Crown of this Realm, and the Descent, Limitation, Inheritance and Government thereof, every such Person or Persons shall be guilty of High Treason, &c. And that in Queen Elizabeth's Time it was made *High Treason* (a) to affirm, That the Laws and Statutes do not bind the Right of the

(a) 13 Eliz. c. 1. Sect. 1.

Crown, and the Descent, Limitation, Inheritance or Governace thereof. I was very much startled at this, but could not answer him; therefore I told him I would write to you for your Opinion on so weighty a Point: I pitcht on you before any other, because the Gentleman hath a very great Respect for you; and so I doubt not your Opinion will very much sway with him, if contrary to his, as it will with me, if agreeable to his. In Expectation thereof of your Answer, I remain,

Dear Sir,

Detton, March 16.

1713-14.

Your faithful Friend,

And

Humble Servant,

WILLIAM ROBINSON.

The

The ANSWER.

Dear Sir,

Yours of the 16th came to my Hands the 19th. And I assure that 'twas with an unexpressible Satisfaction I read that Mr. *Steele's Crisis* hath had so blessed an Effect in your County. I pray God it may produce the like in every other County.

As to the Difficulty you propose to me about those Words of Mr. *Steele* in several Advertisements of his *Crisis*, *that no Power whatsoever can bar, alter, or make void the Succession in the House of Hanover*, for which, you say, Mr. *Aldridge* affirms, Mr. *Steele* is liable to an Indictment upon the Statute of the 4th of this Queen, Chap. 8. which expressly enacts, **That if any Person or Persons shall maliciously, advisedly, and directly, by Writing or Printing, declare, maintain and affirm, that the Kings or Queens of England, with and by the Authority of the Parliament of England, are not able to make Laws and Statutes of sufficient Force**
and

and Validity to limit and bind the Crown of this Realm, and the Descent, Limitation, Inheritance and Government thereof, every such Person or Persons shall be guilty of High Treason, &c. And that in Queen Elizabeth's Time, it was made *High Treason* * to affirm, That the Laws and Statutes do not bind the Right of the Crown, and the Descent, Limitation, Inheritance, or Governance thereof. This Difficulty is only in Appearance, and not in Reality; for upon Examination thereof, it hath entirely vanisht; and before I have done, I am satisfy'd I shall prove to you and Mr. Aldridge,

First, That Mr. Steele is by the Articles of the Union warranted in those Words, *that no Power whatsoever can bar, alter, or make void the Hanover Succession.*

Secondly, That Mr. Steele CANNOT be prosecuted for those Words upon the Statute of the 4th of this Queen, Ch. 8.

* 13 Eliz. c. 1. Sect. 1.

Thirdly,

Thirdly, That there is an infinite Difference between the Case under her present Majesty, and under Queen Elizabeth.

First, That Mr. Steele is by the Articles of the Union warranted in those Words, that no Power whatsoever can bar, alter, or make void the Hanover Succession.

It is an indisputable Rule in Law, that as high a Power is requisite to annul any Act, as to do it; and that an inferior Power cannot repeal the Act of a superior Power.

It is likewise an undeniable Rule in Law, that a delegated Power cannot be extended further than the Delegators express it; and that any Defect in such delegated Power cannot be remedied but by the Delegators of the first Power.

According then to these two Rules, I say that by the Articles of the Union, the Succession to the Crowns of these Realms, settled by Acts of Parliament, after the Demise of her Majesty without Issue, upon the most Illustrious Princess *Sophia*, Electress and Dutches Dowager of *Hanover*, and the Heirs of her Body being

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Protestants, is not only *Now Unalterable* by any Power on Earth, but *For Ever*, &c.

For all the Articles of the Union would have been unalterable, if the Parliaments of *England* and *Scotland*, by the said Articles, had not impower'd the Parliament of *Great-Britain* to make Alterations therein: the Power by which the Parliament of *Great-Britain* can make any Alteration in these Articles, is derived to them from the respective Parliaments of *England* and *Scotland*. This delegated Power, if it be not general, can be extended or exercis'd no farther than the Parliaments of *England* and *Scotland* exprest it in the Articles; nor can be enlarged but by the Parliaments of *England* and *Scotland*: If those Parliaments are *Not* in Being, then there is *None in Being* from whom such Enlargement of Power can flow. There cannot now flow any such Enlargement of Power, because the Parliaments of *England* and *Scotland*, the Fountain-Head thereof, are *no longer in Being*. The Power then of the Parliament of *Great-Britain* must remain as it is exprest; and as exprest, must be pursued; and by being pursued, cannot extend

extend to those Articles of the Union in which no mention is made of their being *subject to such Regulations and Alterations as shall be thought proper to be made by the Parliament of Great Britain*; and as not being so subject, are so ratified, approved and confirmed. Now among those Articles of the Union in which there is no such mention made, is the second Article concerning the *Hanover* Succession; the Words whereof are these,

“ That the Succession to the Monarchy
 “ of the United Kingdom of *Great Bri-*
 “ *tain*, and of the Dominions thereto be-
 “ longing, after her most sacred Majesty,
 “ and in Default of Issue of her Majesty,
 “ be, remain, and continue to the most
 “ Excellent Princess *Sophia*, Electores
 “ and Dutches-Dowager of *Hanover*,
 “ and the Heirs of her Body, being Pro-
 “ testants, upon whom the Crown of *En-*
 “ *gland* is settled by an Act of Parliament
 “ made in *England* in the 12th Year of
 “ the Reign of his late Majesty King
 “ *William the Third*, intitld, *An Act for*
 “ *the further Limitation of the Crown,*
 “ *and better securing the Rights and Li-*
 “ *berties*

“ *berties of the Subject* : And that all
 “ Papists, and Persons marrying Papists,
 “ shall be excluded from, and for ever
 “ incapable to inherit, possess, or enjoy
 “ the Imperial Crown of *Great-Britain*,
 “ and the Dominions thereunto belonging,
 “ or any Part thereof : And in every such
 “ Case, the Crown and Government shall
 “ from time to time descend to, and be
 “ enjoyed by such Person, being a Prote-
 “ stant, as should have inherited and en-
 “ joyed the same, in case such Papist, or
 “ Person marrying a Papist, was naturally
 “ dead, according to the Provision, for
 “ the Descent of the Crown of *England*,
 “ made by another Act of Parliament, in
 “ *England*, in the First Year of the Reign
 “ of their late Majesties K. *William* and
 “ Q. *Mary*, intituled, *An Act declaring the*
 “ *Rights and Liberties of the Subject,*
 “ *and settling the Succession of the*
 “ *Crown.*”

And that the Parliaments of *England*
 and *Scotland* are *not in Being*, is evident,
 because the *Kingdoms* (in the *Plural Num-*
ber) of *England* and *Scotland*, whereof
 they must be the Parliaments, are *not in*
Being ;

Being ; but the *Kingdom* (in the *singular Number*) of *Great-Britain*, with the *Parliament* (in the *singular Number*) thereof, rises in their stead.

But a Question may here be askt, *Whether the Parliament of Great-Britain hath not, since the Union, as full, ample, and extensive a Power, Authority, and Jurisdiction, as the Parliaments of England and Scotland, before the Union, had in their respective Kingdoms : And if the Parliament of Great-Britain hath ; Whether they can't alter the Article of the Succession, as well as the Parliament of England settle the Succession ?*

To this I answer, That the naming the *Parliament of Great-Britain* doth suppose the Continuance of the Union ; this Continuance of the Union doth suppose all Acts and Proceedings of that Parliament agreeable thereto ; for whilst this Union continues, all Acts repugnant to any of the *unalterable Articles* thereof are **NULL** and **VOID** ; and therefore if the *Parliament of Great-Britain* should pass an Act to *bar, alter, or make void the Han-*
over

over *Succession*, such Act would IP SO FACTO be Null and Void. So that, previous to any such Alteration in the *Succession*, the Union it self must be dissolv'd; whereby the Parliament of *Great-Britain* would be dissolv'd of Course; and then, to make a new Settlement of the Crown, the respective Parliaments of *England* and *Scotland* must be summon'd, as before the Union: For no other Power could do it. *First*, That Assembly of Men, before such Dissolution of the Union, call'd the Parliament of *Great-Britain*, could not; because the Union, by Virtue of which they sat, being dissolv'd, they must be dissolv'd of Course, there being no such Kingdom as *Great-Britain*, whereof they must be the Parliament; and by being dissolv'd, they could have no more Power or Authority to make a Law, than the Parliaments now and always have had after their Dissolution. *Secondly*, They could not, as a Parliament of *England*: 1. For the same Reason that they could not as a Parliament of *Great-Britain*. 2. Because to a Parliament of *England*, the *Scotch* Nobility were never summon'd as *Scotch* Peers, but as *English* Peers;

Peers ; nor the Counties, Cities and Burroughs of *Scotland*, ever sent their Representatives. 3. Because summon'd as a Parliament of *Great-Britain*, and not as a Parliament of *England*. *Thirdly*, Nor could they as a Parliament of *Scotland*, not only for the Reasons already alledged, but because they would not be assembled in *Scotland*, as all Parliaments of *Scotland* ought to be. Therefore I conclude, that whilst the Union lasts, *No Power whatsoever can bar, alter, or make void the Hanover Succession* ; nor, if the Union were dissolvable, till it be dissolved, and the respective Parliaments of *England* and *Scotland* summon'd as before the Union : But if the Union be *not* dissolvable, as at present I think it is not, then I do affirm, That *no Power whatsoever can bar, alter, or make void the Hanover Succession* ; and that therefore Mr. STEELE is by the Articles of the Union warranted in those Words.

Secondly, That Mr. STEELE CAN NOT be prosecuted for those Words, upon the Statute of the 4th of this Queen, Chapter 8.

This

This Act, I know is universally taken to extend to a Power or Act *Executory*; and if so, then Mr. STEELE may be prosecuted thereon; and their Reason is, because it repeals the Succession Article of the Union, in that part which relates to its Unalterableness. But this I take to be a very gross Mistake; for, 1st, That Article, declar'd to be unalterable, can't be alter'd by the Parliament of *Great-Britain*, for the Reasons already alledged. 2^{dly}, This Act extends ONLY to a Power or Act *Executed*, not *Executory*: 1st, Because made solely against the Jacobites, Non-jurors, Papists, &c. who exclaim'd against the Act of Settlement, that it was Null and Void, as being prejudicial to the right Heir. 2^{dly}, Because made, as appears by the whole Act itself, to strengthen and confirm the Act of Settlement *already* made. And if these things be true; then it follows, that it is ONLY declaratory of a Power or Act *Executed*, and not of a Power or Act *Executory*: And if it extends ONLY to a Power or Act *Executed*, then Mr. Steele cannot be prosecuted thereon; because to ground a Prosecution

cution thereon, it must extend ONLY to a Power or Act *Executory*, which it doth not; Therefore I conclude that Mr. *Steele* CANNOT be prosecuted for those Words upon the Statute of the 4th of this Queen, *Chap. 8.*

Lastly, That there is *an infinite Difference* between the Case under her present Majesty, and under Queen *Elizabeth*.
For,

First, Under Queen *Elizabeth*, the same Power that had at any time limited the Succession, was still in Being, and so had still a Power to alter it; but now the Powers that ratify'd the Articles of Union, by which the Parliament of *Great-Britain* was authoriz'd to alter some, but not others of those Articles; those Powers, I say, are no longer in Being.

Secondly, If Mr. *Aldridge* had but quoted all the Statute of 13 *Eliz.* cap. 1. you would have seen at first View, that his Quotation out of it is nothing to the purpose: For, Section the First, of which he hath given you a part, extends ONLY

to the Queen's Possession of the Crown, as is evident from the Words thereof,

“ It shall be High Treason to intend
 “ Destruction or Bodily Harm to the
 “ Queen, or to levy War, or to move
 “ others to War against her ; or to af-
 “ firm, That the Queen ought not to
 “ enjoy the Crown, but some other Per-
 “ son ; or to publish, That the Queen is
 “ an Heretick, Schismatick, Tyrant, Infidel,
 “ or Usurper of the Crown ; or to
 “ claim Right to the Crown ; or to usurp
 “ the same during the Queen's Life ; or
 “ to affirm the Right in Succession of
 “ the Crown in some other than the
 “ Queen ; or * to affirm, That the Laws
 “ and Statutes do not bind the Right of
 “ the Crown, and the Descent, Limitation,
 “ Inheritance, or Governance thereof.”

And

* “ Some few Days after her Coronation,
 “ a Parliament was holden, where
 “ it was, by general Voice of all Men,
 “ Enacted, “ That the Lady Elizabeth
 “ was, and (to use the very Words of the
 Statute)

And 'tis Section the second, that extends to the settling the Succession after her Demise without Issue of her Body; as plainly appears from the Words thereof,

“ Whosoever shall, during the Queen’s
 “ Life, by any Book, or Work written,
 “ or printed, expressly affirm (before the
 “ same be established by Parliament) that
 “ any

“ Statute) ought by the Law of God, the
 “ Common Law of England, and the Sta-
 “ tutes of the Realm, to be the lawful
 “ undoubted and most certain Queen of
 “ England, and was justly and lawfully
 “ issued from the Blood Royal, according
 “ to the Order of Succession prescribed by
 “ the Estates of the Realm, in the 35th
 “ Year of Henry the Eighth.” Never-
 “ theless the Statute wherein her Father
 “ had excluded her and Queen Mary
 “ from the Succession of the Crown, was
 “ not repealed. Wherein Bacon’s Wisdom
 “ (upon whom, as the Oracle of the Law,
 “ the Queen wholly relied in such Matters)
 “ in some Mens Opinion failed him; especi-
 “ ally considering that Northumberland had
 C 2 “ objected

“ any one particular Person is, or ought to
 “ be Heir and Successor to the Queen, ex-
 “ cept the same be the Natural Issue of her
 “ Body, &c. shall for the first Offence be
 “ a whole Year imprison’d, and forfeit half
 “ his

“ objected it against Queen Mary and her,
 “ and in that respect Queen Mary had re-
 “ pealed it as far as concerned herself)
 “ and some seditious Persons afterwards
 “ took occasion thereby to attempt dangerous
 “ Matters against her, as not being lawful
 “ Queen; albeit that the English Laws
 “ have long since pronounced, That the
 “ Crown once worn, quite taketh away all
 “ Defects whatsoever: But by others it
 “ was imputed to Bacon’s Wisdom, who,
 “ in so great a Perplexity and Inconstancy of
 “ Acts and Statutes, whereas those things
 “ that made for Q. Elizabeth seemed to be
 “ joined with the Ignominy and Disgrace of
 “ Q. Mary, would not new gall the Sore
 “ which was with Age overskinned; and
 “ therefore applied himself unto that Act of
 “ the 35th Year of Henry 8. which in a
 “ manner provideth for both their Fames
 “ and Dignities alike.” Cambden’s Eliz.

Anno Regni 2. p. 18.

" his Goods ; and for the second Offence,
 " shall incur the Penalty of a *Præmunire*."

So that the Law of 13 *Eliz.* concerning
 the Succession, is concerning a Power *Execu-*
tory, not *Executed* ; whereas I have
 shewn before, that the 4th of her present
 Majesty is a Law concerning a Power *Exec-*
uted, not *Executory* ; so that the Diffe-
 rence is manifest.

I have now given you my Opinion in
 few Words, because you like it best.

If Mr. *Aldridge* hath been industrious in
 raising Doubts and Scruples among your
 Neighbours, be you as industrious in un-
 deceiving them, and thereby in preventing
 the Contagion spreading : If you judge it
 proper, you may tell your Neighbours
 that this is my Opinion, and my Opinion
 by which I shall stick,

I am, Dear Sir,

Your faithful Friend,

Middle-Temple,
 March 25 1714.

and humble Servant,

THOMAS STAINES.

POST.

POSTSCRIPT.

TO obviate an Objection that may be raised from those Words that I have said, *Page 10.* That the *Hanover* Succession is not only **NOW UNALTERABLE** by any Power on Earth, but **FOR EVER SO, &c.** as if I thereby affirmed, that after that Succession had taken Effect, the Legislative Power could not make any Alteration therein: To obviate, I say, such an Objection, I do declare, That I intended no more by the aforesaid Words, than that the Legislative Power cannot **NOW** by any Act or Law, *bar* that Family from coming to the Crown upon the Demise of her Majesty without Issue of her Body; and not, That after that Family had come to the Possession of Crown, that **THEN** the Legislative Power could not alter the Succession in that Family: For as I have affirm'd,
That

That the Legislative Power cannot NOW
 by any Act or Law, *bar* that Family
 from coming to the Crown upon the De-
 mise of her Majesty without Issue of
 her Body ; so do I affirm, That after
 that Family is come to the Crown, the
 Legislative Power may alter the Succession
 in that Family.

F I N I S.

[23]

That the Legislative Power cannot NOW
by any Act or Law, take that Family
from coming to the Crown upon the De-
tail of her Majesty without issue of
her Body; so as to prevent the said
that Family is come to the Crown, the
Legislative Power has not the Succession
in that Family.



F I N I S

Presented July 176

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